

Short Title: GSC Sale of Property Amendments.

A BILL TO BE ENTITLED

AN ACT (I) TO UPDATE THE MAILING METHOD OF NOTICE TO A JUDGMENT
DEBTOR OF AN EXECUTION SALE OF REAL PROPERTY, (II) TO CLARIFY THE
EFFECTS OF A DEFAULT BID IN PRIVATE JUDICIAL SALES AND PUBLIC OR
PRIVATE PARTITION SALES, (III) TO PROVIDE THAT IN A TAX FORECLOSURE
ACTION, A COMMISSIONER'S FEE SHALL NOT BE INCLUDED IN THE AMOUNT
NECESSARY TO REDEEM THE REAL PROPERTY DURING THE PERIOD BETWEEN
THE DATE OF SALE AND THE JUDGMENT CONFIRMING THE SALE, (IV) TO
REMOVE OBSOLETE LANGUAGE CONCERNING TAX LIEN SALES, AND (V) TO
MAKE TECHNICAL AMENDMENTS IN THE SURROUNDING LANGUAGE.

The General Assembly of North Carolina enacts:

PART I. UPDATE MAILING METHOD OF NOTICE IN EXECUTION SALES

SECTION 1.(a) G.S. 1-339.54 reads as rewritten:

"§ 1-339.54. Notice to judgment debtor of sale of real property.

In addition to complying with G.S. 1-339.52, relating to posting and publishing the notice of
sale, the sheriff shall, at least ten days before the sale of real property, take the following action:

(1) If the judgment debtor is found in the county, serve a copy of the notice of
sale on ~~him personally, or~~ the judgment debtor personally.

(2) If the judgment debtor is not found in the county, send and serve notice as
follows:

a. Send a copy of the notice of sale by registered ~~mail~~ or certified mail,
return receipt requested, to the judgment debtor at ~~his~~ the judgment
debtor's last address known to the ~~sheriff,~~ and sheriff.

- b. Serve a copy of the notice of sale on the judgment debtor's agent, if there is in the county a person known to the sheriff to be an agent who has custody or management of, or who exercises control over, any property in the county belonging to the judgment debtor."

SECTION 1.(b) This section becomes effective October 1, 2021, and applies to executions issued on or after that date.

**PART II. CLARIFY EFFECTS OF DEFAULT BIDS IN PRIVATE JUDICIAL SALES
AND PUBLIC OR PRIVATE PARTITION SALES**

SECTION 2.(a) G.S. 1-339.36 reads as rewritten:

"§ 1-339.36. Private sale; upset bid; subsequent ~~procedure~~; procedure; defaulting bidder.

(a) Every private sale of real or personal property, except a sale of personal property as provided by G.S. 1-339.34, is subject to an upset bid on the same conditions and in the same manner as is provided by G.S. 1-339.25.

(b) When an upset bid is made for property sold at private sale, subsequent procedure with respect to the upset bid is the same as for upset bids submitted in connection with real property sold at public sale, except that the notice of any resale of personal property held pursuant to an order granted under G.S. 1-339.27A need not be published in a newspaper but shall be posted as provided by G.S. 1-339.17.

(c) Subsections (e) and (f) of G.S. 1-339.30 apply to a defaulting bidder in a private sale."

[Staff Note: G.S. 1-339.30 provides:

"§ 1-339.30. Public sale; failure of bidder to make cash deposit or to comply with bid; resale.

(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and the highest bidder fails to make the required deposit, the person holding the sale shall at the same time and place again offer the property for sale.

(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who

submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

(b) When the highest bidder at a public sale of personal property not required to be confirmed fails to make the cash payment, if any, required by the terms of the sale, the person holding the sale shall at the same time and place again offer the property for sale. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.

(c) When the highest bidder at a public sale of personal property required to be confirmed fails to comply with his bid within 10 days after notice given by the person holding the sale or after a bona fide attempt to give such notice that the sale has been confirmed, the judge or clerk having jurisdiction may order a resale. The procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale of personal property.

(d) When the highest bidder at a public sale or resale of real property by auction or any upset bidder fails to comply with the bid within 10 days after the tender to the bidder of a deed for the property or after a bona fide attempt to tender the deed, the judge or clerk having jurisdiction may order a resale. The procedure for a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property.

(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with the bid within 10 days after the tender to the bidder of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

(e) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on the bid, and in case a resale is had because of the default, the defaulting bidder remains liable to the extent that the final sale price is less than the bid, and for all costs of the resale or resales. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(f) Nothing in this section deprives any person of any other remedy against the defaulting bidder."]

SECTION 2.(b) Part 3 of Article 2 of Chapter 46A of the General Statutes is amended by adding a new section to read:

"§ 46A-84.5. Petition for revocation based on default bid.

If a purchaser in a partition sale defaults on the purchaser's bid, any party to the partition proceeding or the officer or person designated to make the sale may at any time petition the court to revoke its order confirming the partition sale. The petitioner for revocation shall deliver a copy of the petition to all parties required to be served under G.S. 1A-1, Rule 5. If the court finds that the purchaser defaulted on the purchaser's bid, the court shall revoke its order of confirmation and order a resale."

[Staff Note: Paul Stam, a partition law practitioner, suggests adding the phrase "after default" after the phrase "at any time". He also believes the sentence regarding service under Rule 5 is unnecessary and that the last sentence should have a "may" instead of a "shall". He commented that a purchaser that defaults may be able to later fulfill the terms of the bid and that in certain private sales where numerous issues may be at play, there may be a legitimate disagreement over whether there has been a default.

Matt Kraus, a member of the Administrative Office of Court's Office of General Counsel, speaking only in his capacity as an advisor to the clerks of court on special proceedings, gave the following comments: (1) this provision should recognize that an allegation of default is merely an allegation until the court decides there has been a default, (2) the commissioner, not the parties, should initiate the petition for revocation based on a default bid, and (3) the purchaser should also be served the petition. He also echoed Mr. Stam's comment that there is sometimes a legitimate disagreement over whether the purchaser has in fact defaulted.]

[Staff Note: For reference, G.S. 46A-83 provides:

§ 46A-83. Petition for revocation of confirmation order.

(a) Grounds for Revocation. – Notwithstanding G.S. 46A-76 or any other provision of law, within 15 days of entry of the order confirming the partition sale of real property, the purchaser or any party to the partition proceeding may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding, any of the following:
 - a. Notice of the partition was not served on the petitioner for revocation as required by G.S. 1A-1, Rule 4.
 - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46A-76(d).
 - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) Effect of Notice. – A petitioner for revocation shall not prevail under sub-subdivision (a)(2)a. or b. of this section, if the petitioner was mailed notice of the sale in accordance with G.S. 46A-76(d).

(c) Service; Notice of Hearing. – The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under G.S. 1A-1, Rule 5, and shall serve the officer or person designated to make the sale under G.S. 1A-1, Rule 4(j). The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make the sale, and all parties required to be served under G.S. 1A-1, Rule 5.

(d) Petition by Purchaser. – In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence all of the following, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer:

- (1) A lien remains unsatisfied on the property to be conveyed.
- (2) The purchaser has not agreed in writing to assume the lien.
- (3) The lien will not be satisfied out of the proceeds of the sale.

(4) *The existence of the lien was not disclosed in the notice of sale of the property. The order of the court in revoking an order of confirmation under this section shall not be introduced in any other proceeding to establish or deny the existence of a lien.*

(e) *Petition by Party. – In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that the petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.*

(f) *Resale. – If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is as provided under G.S. 46A-76.]*

SECTION 2.(c) This section is effective when it becomes law and applies to actions or proceedings pending on or commenced on or after that date.

PART III. AMENDMENTS REGARDING COMMISSIONER'S FEES IN TAX FORECLOSURE ACTIONS AND REMOVAL OF OBSOLETE LANGUAGE

SECTION 3.(a) G.S. 105-374 reads as rewritten:

"§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(a) General Nature of Action. – The foreclosure action authorized by this section is in the nature of an action to foreclose a mortgage and shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is situated and shall be an action in the nature of an action to foreclose a mortgage. situated.

(b) Tax Lien. – Taxing units may proceed under this section, either section on the original tax lien created by G.S. 105-355(a) or on the lien acquired at a tax lien sale held under former G.S. 105-369 before July 1, 1983, with or without a lien sale certificate; and the amount of recovery in either case shall be the same. To this end, it is hereby declared that the G.S. 105-355(a). The original attachment of the tax lien under G.S. 105-355(a) is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of a lien sale certificate to the taxing unit for lien sales held before July 1, 1983, is a matter of convenience in record keeping

~~within the discretion of the governing body of the taxing unit, and that issuance of such
certificates is not a prerequisite to perfection of the tax lien. unit.~~

(c) Parties; ~~Summonses.~~ Summons. ~~— The owner of record as of the date the taxes
became delinquent and spouse (if any), any subsequent owner, all other taxing units having tax
liens, all other lienholders of record, and all persons who would be entitled to be made parties to
a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such
property, Each of the following persons shall be made parties and shall be served with
summonses a summons~~ in the manner provided by ~~G.S. 1A-1, Rule 4.~~ G.S. 1A-1, Rule 4:

- (1) The owner of record as of the date the taxes became delinquent and the
owner's spouse, if any.
- (2) Any subsequent owner.
- (3) All other taxing units having tax liens.
- (4) All other lienholders of record.
- (5) All persons that would be entitled to be made parties to a court action to
foreclose a mortgage on the property in which no deficiency judgment is
sought.

The fact that the owner of record as of the date the taxes became delinquent, any subsequent
owner, or any other defendant is a minor, is incompetent, or is under any other disability shall
not prevent or delay ~~the tax lien sale or~~ the foreclosure of the tax lien; and ~~all such each of these~~
persons shall be made parties and shall be served with a summons in the same manner as in other
civil actions.

Persons ~~who have disappeared or who that~~ cannot be located ~~and located~~, persons whose
names and whereabouts are unknown, and all possible heirs or assignees of ~~such these persons,~~
persons may be served by publication; and ~~such these~~ persons, their heirs, and assignees may be
designated by general description or by fictitious names in ~~such an the~~ action.

(c1) Lienholders Separately Designated. – The word "lienholder" shall appear immediately after the name of each lienholder (including trustees and beneficiaries in deeds of trust, and holders of judgment liens) whose name appears in the caption of any action instituted under ~~the provisions of~~ this section. ~~Such~~ This designation is intended to make clear to the public the capacity of ~~such these~~ persons ~~which that~~ necessitated their having been made parties to ~~such~~ the action. Failure to add ~~such this~~ designation to captions ~~shall does~~ not constitute grounds for attacking the validity of ~~actions an action~~ brought under this ~~section, section~~ or ~~titles the title~~ to real property derived from ~~such actions the action~~.

(d) Complaint as Lis Pendens. – The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest ~~therein in the property~~ is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It ~~shall not be is not~~ necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this ~~subsection (d) subsection~~.

(e) Subsequent Taxes. – The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes ~~which that~~ are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property ~~which that~~ have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and ~~costs thereon costs~~. Immediately prior to judgment ordering sale in a foreclosure ~~action (if action, if there has~~

1 been no redemption prior to that ~~time~~ time, the tax collector or the attorney for the plaintiff unit
2 shall file in the action a certificate setting forth all taxes ~~which that~~ are a lien on the real property
3 in favor of the plaintiff ~~unit (other unit, other~~ unit, other than taxes the amount of which has not been
4 definitely ~~determined)~~ determined.

5 (e1) Taxes Paid By Plaintiff. – Any plaintiff in a tax foreclosure ~~action (other action, other~~
6 than a taxing ~~unit)~~ unit, may include in ~~his~~ the complaint, originally or by amendment, all other
7 taxes and special assessments paid by ~~him which the plaintiff that~~ were liens on the same real
8 property.

9 (f) Joinder of Parcels. – All real property within the taxing unit subject to liens for taxes
10 levied against the same taxpayer for the first year involved in the foreclosure action may be joined
11 in one action. However, if real property is transferred by the listing taxpayer subsequent to the
12 first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs
13 ~~(for for which the property is ordered sold under the terms of this Subchapter)~~ this Subchapter
14 shall be prorated to ~~such the~~ the property in the same manner as if payments were being made to
15 release ~~such the~~ the property from the tax lien under ~~the provisions of G.S. 105-356(b).~~

16 (g) Special Benefit Assessments. – A cause of action for the foreclosure of the lien of any
17 special benefit assessments may be included in any complaint filed under this section.

18 (h) Joint Foreclosure by Two or More Taxing Units. – Liens of different taxing units on
19 the same parcel of real property, representing taxes in the hands of the same tax collector, shall
20 be foreclosed in one action. Liens of different taxing units on the same parcel of real property,
21 representing taxes in the hands of different tax collectors, may be foreclosed in one action in the
22 discretion of the governing bodies of the taxing units.

23 The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged
24 in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to
25 judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax

collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it ~~shall not be~~ is not necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to ~~any such~~ the taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate of subsequent taxes provided for in ~~the preceding paragraph, this subsection,~~ all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale ~~(after sale, after~~ payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and ~~certificates)~~ certificates, ~~may be~~ is sufficient to pay ~~such~~ the taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of ~~such~~ the actions or such other disposition ~~thereof (and such disposition of the costs therein)~~ of the actions, including disposition of the costs, as it ~~may deem~~ deems advisable. ~~Any such~~ The order may be made by the clerk of the superior court, subject to appeal as provided in G.S. 1-301.1.

(i) Costs. —~~Subject to the provisions of this subsection (i),~~ Except as modified by this subsection, costs may be taxed in any foreclosure action brought under this section in the same manner as in other civil actions. When costs are collected, either by payment prior to the sale or upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no prosecution bond shall be required.

The word "costs," as used in this ~~subsection (i),~~ subsection, ~~shall be construed to include one~~ includes a reasonable attorney's fee for the plaintiff in such amount as the court shall, in its

discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure action and files ~~answer therein, there may be included an answer, the court may include~~ in the costs an attorney's fee for the defendant unit in ~~such amount as the court shall, an amount that~~ the court, in its discretion, determine and allow. determines and allows. The governing body of any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to its attorney as a suit fee, and the governing body may allow a reasonable commission to its attorney on taxes collected by ~~him after they have been placed in his hands; or the attorney.~~ Alternatively, the governing body may arrange with its attorney for the handling of tax foreclosure suits on a salary basis or may make any other reasonable agreement with its ~~attorney or attorneys, attorney.~~ Any arrangement made between a taxing unit and its attorney may provide that attorneys' fees collected as costs in foreclosure actions shall be collected for the use of the taxing unit.

In any foreclosure action in which ~~real property is actually sold after judgment, the court enters a judgment confirming the sale of real property,~~ costs shall include a commissioner's fee to be fixed by the court, not exceeding five percent (5%) of the purchase ~~price; and in price. In~~ case of redemption ~~between the date of sale and the order prior to the judgment~~ of confirmation, ~~the a~~ the a commissioner's fee shall not be added to the amount otherwise necessary for redemption.

In case more than one sale is made of the same property in any action, the commissioner's fee may be based on the highest amount bid, but the commissioner shall not be allowed a separate fee for each such sale. The governing body of any plaintiff unit may request the court to appoint as commissioner a salaried official, attorney, or employee of the unit and, when the requested appointment is made, may require that the commissioner's fees, when collected, be paid to the plaintiff unit for its use.

(j) Contested Actions. – Any action brought under this section in which an answer raising an issue requiring trial is filed within the time allowed by law ~~shall be~~ is entitled to a preference as to time of trial over all other civil actions.

(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or as much as may be necessary for the satisfaction of all of the following:

(1) Taxes adjudged to be liens in favor of the ~~plaintiff (other plaintiff, other than~~ taxes the amount of which has not been definitely ~~determined)~~ determined, together with penalties, interest, and ~~costs thereon.~~ costs.

(2) Taxes adjudged to be liens in favor of other taxing ~~units (other units, other than~~ taxes the amount of which has not yet been definitely ~~determined)~~ determined, if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and ~~costs thereon.~~ costs.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever, except that the sale shall be subject to (i) taxes the amount of which cannot be definitely determined at the time of the judgment, (ii) taxes and special assessments of taxing units which are not parties to the action, ~~and~~ and (iii) in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of ~~said the~~ property, the clerk of the superior court may enter the judgment, subject to appeal as provided in G.S. 1-301.1.

(l) Advertisement of Sale. – The sale ~~shall be advertised,~~ and all necessary resales shall be ~~advertised,~~ advertised in the manner provided by Article 29A of Chapter 1 of the General Statutes or by any statute enacted in substitution therefor. Statutes.

(m) Sale. – The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday when the courthouse is closed for transactions. ~~(In~~In actions brought by a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall ~~door.)~~door.

(m1) Deposit from Bidder. – The commissioner conducting the sale may, in ~~his~~the commissioner's discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of ~~his bid, which deposit, in the bid.~~ In the event that the bidder refuses to take title and a resale becomes necessary, the deposit shall be applied to pay the costs of sale and any loss resulting. ~~(However, this provision shall not deprive~~Nothing in this subsection deprives the commissioner of ~~his~~the commissioner's right to sue for specific performance of the ~~contract.)~~contract. No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. – Within three days following the foreclosure ~~sale~~sale, the commissioner shall report the sale to the court giving full particulars ~~thereof~~of the sale.

(o) Exceptions and Increased Bids. – At any time within 10 days after the commissioner files ~~his~~the report of the foreclosure sale, any person having an interest in the real property may file exceptions to the report, and at any time within that 10-day ~~period~~period, an increased bid may be filed in the amount specified by and subject to the provisions ~~(other than provisions in conflict herewith)~~ of Article 29A of Chapter 1 of the General Statutes ~~or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor.~~ Statutes, except as otherwise provided by this section. In the absence of exceptions or increased bids, the court may, whenever it deems ~~such action~~it necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. – At any time after the expiration of 10 days from the time the commissioner files ~~his~~the report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner ~~he~~the commissioner may apply for ~~such~~a judgment of confirmation after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be entered by the clerk of superior court subject to appeal as provided in G.S. 1-301.1.

(q) Application of Proceeds; Commissioner's Final Report. – After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

(1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's ~~fee, which costs fee.~~ The costs shall be paid to the officials or funds entitled ~~thereto;~~to them.

(2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered ~~sold;~~sold.

(3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and ~~costs thereon;~~costs.

(4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but ~~which~~that filed no answers ~~therein;~~in the action.

(5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but ~~which~~that filed no answers ~~therein,~~in the action, together with interest and ~~costs thereon;~~costs.

(6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of ~~such~~ directions, shall be paid into court for the benefit of the persons entitled ~~thereto. to it.~~ ~~(If~~ the clerk is in doubt as to ~~who~~ which person is entitled to the surplus or if any adverse claims are asserted ~~thereto, to the surplus,~~ the clerk shall hold the surplus until rights ~~thereto to it~~ are established in a special proceeding pursuant to ~~G.S. 1-339.71.)~~ G.S. 1-339.71.

Within five days after delivering the deed, the commissioner shall make a full report to the court showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds, accompanied by receipts evidencing all ~~such~~ the disbursements.

(r) Purchase and Resale by Taxing Unit. – The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by G.S. 105-376."

[SECTION 3.(b)] G.S. 105-373 reads as rewritten:

"§ 105-373. Settlements.

(a) Annual Settlement of Tax Collector. –

(1) Preliminary Report. – After July 1 and before ~~he~~ a tax collector is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit ~~showing:~~ showing all of the following:

- a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each ~~person; and person.~~ person.
- b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. ~~(To~~ To this list the tax collector shall

1 append ~~his~~a statement under oath that ~~he~~the tax collector has made
2 diligent efforts to collect the taxes due from the persons listed out of
3 their personal property and by other means available ~~to him~~ for
4 collection, and ~~he~~the tax collector shall report ~~such~~any other
5 information concerning these taxpayers ~~as that~~ may be of interest to or
6 required by the governing body, including a report of ~~his~~the tax
7 collector's efforts to make collection outside the taxing unit under ~~the~~
8 ~~provisions of G.S. 105-364.)~~G.S. 105-364. The governing body of the
9 taxing unit may publish this list in any newspaper in the taxing unit.
10 The cost of publishing this list shall be paid by the taxing unit.

11 (2) Insolvents. – Upon receiving the report required by subdivision ~~(a)(1), above~~
12 (a)(1) of this section, the governing body of the taxing unit shall enter upon
13 its minutes the names of persons owing ~~taxes (but who taxes, but that~~ listed
14 no real ~~property)~~property, whom that it finds to be insolvent, and it shall by
15 resolution designate the list entered in its minutes as the insolvent list to be
16 credited to the tax collector in ~~his~~the tax collector's settlement.

17 (3) Settlement for Current Taxes. – After July 1 and before ~~he~~a tax collector is
18 charged with taxes for the current fiscal year, the tax collector shall make full
19 settlement with the governing body of the taxing unit for all taxes in ~~his~~the
20 tax collector's hands for collection for the preceding fiscal year. The following
21 charges and credits apply:

22 a. In the settlement the tax collector shall be charged ~~with:~~ with all of the
23 following:

24 1. The total amount of all taxes in ~~his~~the tax collector's hands for
25 collection for the year, including amounts originally charged

to ~~him~~ the tax collector and all amounts subsequently charged
on account of ~~discoveries~~; discoveries.

2. All penalties, interest, and costs collected by ~~him~~ the tax
collector in connection with taxes for the current ~~year~~; and
year.

3. All other sums collected by ~~him~~ the tax collector.

b. The tax collector shall be credited ~~with~~; with all of the following:

1. All sums representing taxes for the year deposited by ~~him~~ the
tax collector to the credit of the taxing unit or receipted for by
a proper official of the ~~unit~~; unit.

2. Releases duly allowed by the governing ~~body~~; body.

3. The principal amount of taxes constituting liens on real
~~property~~; property.

4. The principal amount of taxes included in the insolvent list
determined in accordance with subdivision ~~(a)(2)~~; above;
(a)(2) of this section.

5. Discounts allowed by ~~law~~; law.

6. ~~Commissions (if any)~~ Commissions, if any, lawfully payable
to the tax collector as ~~compensation~~; and compensation.

7. The principal amount of taxes for any assessment appealed to
the Property Tax Commission when the appeal has not been
finally adjudicated.

The tax collector shall be liable on ~~his~~ the tax collector's bond for both
honesty and faithful performance of duty; for any deficiencies; and, in
addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect ~~thereto, to it,~~ shall be entered in full upon the minutes of the governing body.

(4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision ~~(a)(3), above, (a)(3) of this section,~~ whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes ~~shall:~~ shall take the following actions:

- a. Give bond satisfactory to the governing ~~body;~~ body.
- b. Receive the tax receipts and tax records representing the uncollected ~~taxes;~~ taxes.
- c. Have and exercise all powers and duties conferred or imposed by law upon tax ~~collectors;~~ and collectors.
- d. Receive compensation as determined by the governing body.

(b) Settlements for Delinquent Taxes. – Annually, at the time prescribed for the settlement provided in subdivision ~~(a)(3), above, (a)(3) of this section,~~ all persons having in their hands for collection any taxes for years prior to the year involved in the settlement shall settle with the governing body of the taxing unit for collections made on each ~~such prior~~ year's taxes. The settlement for the taxes for prior years shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(c) Settlement at End of Term. – ~~Whenever any tax collector fails to succeed himself at~~
At the end of his a tax collector's last term of office, he the tax collector shall, on the last business

1 day of ~~his~~the term, make full and complete settlement for all ~~taxes (current taxes, current or~~
2 ~~delinquent) delinquent~~, in ~~his~~the tax collector's hands and deliver the tax records, tax receipts,
3 ~~tax sale certificates~~, and accounts to ~~his~~the successor in office. The settlement shall be made in
4 whatever form is satisfactory to the chief accounting officer and the governing body of the taxing
5 unit, and it shall be entered in full upon the minutes of the governing body.

6 (d) Settlement upon Vacancy during Term. – When a tax collector voluntarily resigns, ~~he~~
7 the tax collector shall, upon ~~his~~the last day in office, make full settlement (~~in~~in the manner
8 provided in subsection ~~(e), above~~(c) of this section for all taxes in ~~his~~the tax collector's hands
9 for collection. In default of ~~such~~ a settlement, or in case of a vacancy occurring during a term for
10 any reason, it shall be the duty of the chief accounting officer or, in the discretion of the governing
11 body, of some other qualified person appointed by it immediately to prepare and submit to the
12 governing body a report in the nature of a settlement made on behalf of the former tax collector.
13 The report, together with the governing body's action with respect ~~thereto~~to it, shall be entered
14 in full upon the minutes of the governing body. Whenever a settlement ~~must be~~is made ~~in~~on
15 behalf of a former tax collector, ~~as provided in this subsection (d)~~, the governing body may
16 deliver the ~~tax receipts, tax records, and tax sale certificates~~ tax receipts and tax records to a
17 successor collector immediately upon the occurrence of the vacancy, or it may make whatever
18 temporary arrangements for the collection of taxes as may be expedient, but in no event shall any
19 person be permitted to collect taxes until ~~he~~the person has given bond satisfactory to the
20 governing body.

21 (e) Effect of Approval of Settlement. – Approval of any settlement by the governing body
22 does not relieve the tax collector or ~~his~~the tax collector's bondsmen of liability for any shortage
23 actually existing at the time of the settlement and thereafter discovered; nor does it relieve the
24 collector of any criminal liability.

(f) Penalties. – In addition to any other civil or criminal penalties provided by law, any member of a governing body of a taxing unit, tax collector, or chief accounting officer who fails to perform any duty imposed upon ~~him~~ that person by this section ~~shall be~~ is guilty of a Class 1 misdemeanor.

(g) Relief from Collecting Insolvents. – The governing body of any taxing unit may, in its discretion, relieve the tax collector of the charge of taxes owed by persons on the insolvent list that are five or more years past due when it appears to the governing body that ~~such~~ the taxes are uncollectible.

(h) Relief from Collecting Taxes on Classified Motor ~~Vehicles.~~ Vehicles. – The board of county commissioners may, in its discretion, relieve the tax collector of the charge of taxes on classified motor vehicles listed pursuant to ~~G.S. 105-330.3(a)(1)~~ G.S. 105-330.3(a) that are one year or more past due when it appears to the board that the taxes are uncollectible. This relief, when granted, shall include municipal and special district taxes charged to the collector."

[Staff Note: S.L. 2009-445, s. 24(a), redesignated G.S. 105-330.3(a)(1) as G.S. 105-330.3(a).]

SECTION 3.(c) G.S. 105-378 reads as rewritten:

"§ 105-378. Limitation on use of remedies.

(a) Use of Remedies Barred. – No county or municipality ~~may~~ shall maintain an action or procedure to enforce any remedy provided by law for the collection of taxes or the enforcement of any tax ~~liens (whether~~ liens, whether the taxes or tax liens are evidenced by ~~the original tax receipts, tax sales certificates, tax receipts or otherwise)~~ otherwise, unless the action or procedure is instituted within 10 years from the date the taxes became due.

(b) Not Applicable to Special Assessments. – ~~The provisions of subsection (a), above,~~ shall not be construed to Subsection (a) of this section does not apply to the lien of special assessments.

(c) Repealed by Session Laws 1998-98, s. 26, effective August 14, 1998.

(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the county board of equalization and review or the Property Tax Commission, the tax collector ~~may~~shall not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."]

SECTION 3.(d) This section becomes effective October 1, 2021[, and applies to tax foreclosure actions commenced on or after that date]. [Subsection (a) of this section applies to tax foreclosure actions commenced on or after that date.]

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.